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California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

EARL JENTZ et al.,

Plaintiffs and Appellants,

v.

CITY OF CHULA VISTA,

Defendant and Respondent,

NIKI PROPERTIES, LLC,

Real Party in Interest and Respondent.

D073189

(Super. Ct. No. 37-2016-00032228-  
CU-TT-CTL)

ORDER MODIFYING OPINION

**[NO CHANGE IN JUDGMENT]**

THE COURT:

It is ordered that the opinion filed herein on February 6, 2019, be modified as follows:

On page 1, the second paragraph of the counsel listing is corrected and replaced with the following lines:

"Glen R. Googins, City Attorney, Bart J. Miesfeld, Assistant City Attorney and Michael J. Shirey, Deputy City Attorney; Gatzke Dillon & Ballance and Mark J. Dillon, John W. Dillon for Respondent City of Chula Vista."

On page 2, the last paragraph of the counsel listing is corrected and replaced with the following lines:

"Hecht Solberg Robinson Goldberg & Bagley and Richard A. Schulman, David M. Gao for Real Party in Interest and Respondent, Niki Properties, LLC."

On page 3, the last paragraph, third sentence, the word "Ration" is replaced with the word "Ratio" so that the sentence now reads:

"In addition to other requirements not satisfied by the proposal, the letter noted that the proposed Floor Area Ratio (FAR) (the ratio between the size of the lot and the amount of the building's floor space) of 2.3 exceeded the 1.0 FAR allowed by the Specific Plan and outlined revisions to the design that might support a request for increases in the allowable FAR."

**This modification does not change the judgment.**

O'ROURKE, Acting P. J.

Copies to: All parties

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(Super. Ct. No. 37-2016-00032228-  
CU-TT-CTL)

APPEAL from a judgment of the Superior Court of San Diego County, Katherine A. Bacal, Judge. Affirmed.

DeLano & DeLano, Everett L. DeLano III and M. Dare DeLano for Petitioners and Appellants.

Gatze, Dillon & Ballance, Mark J. Dillon, John W. Dillion, Glen R. Googins, Michael J. Shirey and Bart J. Miesfeld for Respondent City of Chula Vista.

Hecht Solberg Robinson Goldberg & Bagley and Richard A. Shulman for Real Party in Interest and Respondent, Niki Industries, LLC.

In 2016, the City of Chula Vista (City) approved a development by real party in interest Niki Properties LLC (Niki) of a five-story, 71-unit housing project on the northeast corner of Third Avenue and K Street (Project). Earl Jentz and Gloria Gonzales (collectively, Jentz) opposed the project at each stage of the City's approval process. After Jentz's appeal of the City's approval to the City Council failed, Jentz brought a petition for writ of mandate in San Diego Superior Court seeking to overturn the City's decision. The court denied Jentz's requested relief and entered judgment in favor of the City and Niki.

On appeal from that judgment, Jentz asserts the City's approval of the project violates the City's General Plan and Urban Core Specific Plan (UCSP), and that the City and Niki failed to comply with the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.<sup>1</sup>). Specifically, Jentz argues (1) the Project violates the City's General Plan use restrictions and public financing plan requirements, (2) the environmental impact report (EIR) addendum adopted by the City for the Project was insufficient under CEQA, and (3) the mitigation requirements imposed on the Project by the City are insufficient under the UCSP and CEQA. We reject each of these challenges and affirm the judgment.

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<sup>1</sup> Subsequent undesignated statutory references are to the Public Resources Code.

## FACTUAL AND PROCEDURAL BACKGROUND

The Project site consists of 1.05 acres (45,738 square feet) of land on the northeast corner of Third Avenue and K Street. The site is in the C-1 Corridor Sub-District (also known as the Third Avenue South District) of the City's Urban Core Specific Plan, which was adopted in 2007 in compliance with CEQA.<sup>2</sup> At the time of the City's approval of the Project, three buildings constructed in the 1950's and 1960's were located on the site. Two of the buildings were occupied, containing a martial arts studio, an insurance office, a flower shop, and a chiropractor, and one building was vacant. Located near the site, along Third Avenue, are other retail and commercial businesses and a senior housing complex. Single-family homes are located on the same block and directly east of the site, and other multi-unit housing developments are located across the street.

In June 2015, Niki submitted a design review application for the project seeking several deviations from the City's zoning regulations. The following September, the City's project manager assigned to the application responded with a letter to the Project's architect identifying key concerns. In addition to other requirements not satisfied by the proposal, the letter noted that the proposed Floor Area Ratio (FAR) (the ratio between the size of the lot and the amount of the building's floor space) of 2.3 exceeded the 1.0 FAR allowed by the Specific Plan and outlined revisions to the design that might support a request for increases in the allowable FAR.

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<sup>2</sup> Jentz also unsuccessfully challenged the City's adoption of the UCSP. (*See Jentz v. City of Chula Vista* (Nov. 3, 2010, D055401) [nonpub. opn.] )

The City held a public meeting on October 15, 2015, to present the Project to the community and obtain input from interested parties concerning the design of the Project and its potential impacts. Approximately 50 community members attended the public meeting. A City official's notes from the meeting show community members were strongly opposed to the project. Community members raised numerous concerns, including with the proposed FAR, the minimal amount of commercial use proposed, the lack of parking to support the number of residences, the inclusion of balconies that could infringe on neighboring homes' privacy, and the lack of sufficient setbacks.

Thereafter, Niki's architects revised the design to address the concerns raised at the meeting. The revised plan was submitted to the City and a second public meeting took place on December 16, 2015, with approximately 70 community members in attendance. Many continued to oppose the project, again objecting to the FAR, raising concerns about privacy and traffic and parking impacts, and arguing that the project failed to comply with the UCSP. Community members who supported the project commented that the new housing would benefit the community and that the Project would improve the character of the neighborhood.

As a result of the second meeting, Niki further revised the Project plans, reducing the building height and mass, reducing the number of residential units from 80 to 71, reducing the FAR from 2.3 to 2.0, adding 14 additional parking spaces and designating seven spaces for guest parking, removing some of the balconies and recessing other balconies to provide more distance from nearby homes, and adding additional landscaping as a screen on a second floor terrace to address privacy concerns. The

developer also provided a traffic assessment and report, which concluded that the Project would not have any negative traffic impacts on nearby streets.

On April 15, 2016, the City received a letter from an attorney representing Jentz's corporation, Balboa Equity Capital, commenting on the revised Project application. The letter stated that Jentz's "fundamental concern with the Application is that the FAR requested exceeds by 95 percent that which is authorized by the base FAR for the C-1 Third Avenue South Neighborhood Transition Zone" and argued the level of density requested exceeded that allowed by the UCSP. The letter argued the staff report on the Project "must evaluate the degree of public benefit provided by the proposed project" and submitted that the benefit provided by the project "does not warrant a 50 percent increase in FAR, although some lesser increase in FAR may be justified." The letter also argued the Project's second-floor terrace and balcony units were inconsistent with the UCSP because they overlooked the yards of adjacent homes, and that a streamlined environmental review under CEQA was not appropriate because the Project was inconsistent with the UCSP.

Thereafter, City staff prepared an Addendum to the City's Final EIR for the UCSP addressing the Project and prepared two approval Resolutions for consideration by the City's Planning Commission. The Planning Commission held a noticed public meeting on June 22, 2016. The agenda statement described the action sought by the City and Niki as "CONSIDERTION OF ADDENDUM TO THE URBAN CORE SPECIFIC PLAN FINAL ENVIRONMENTAL IMPACT REPORT AND MITIGATION MONITORING AND REPORTING PROGRAM FEIR 06-01; DESIGN REVIEW PERMIT (URBAN

CORE DEVELOPMENT PERMIT) DR15-0015 TO REDEVELOP THE SITE AT 795 THIRD AVENUE WITH 71 RESIDENTIAL CONDOMINIUM UNITS AND 616 SQUARE FEET OF COMMERCIAL SPACE; AND TENTATIVE MAP PCS15-0006 TO CONSOLIDATE TWO LEGAL LOTS INTO A RESIDENTIAL CONDOMINIUM LOT FOR INDIVIDUAL OWNERSHIP."

The Planning Commission heard testimony of both supporters and opponents of the Project. Those in support noted that the Project would bring needed additional affordable housing and that increased density would be good for the area. Those against voiced concerns primarily about the lack of parking and increased traffic in the area. At the conclusion of the meeting, the Planning Commission adopted the two approving resolutions and the Addendum to the UCSP EIR. In July 2016, Jentz appealed the Planning Commission's decision to the City Council. A letter to the City from Jentz's former attorney asserted the City Council should overturn the approval because the evidence before the Commission showed the Project was inconsistent with the UCSP and Municipal Code, those speaking in support of the project provided inaccurate statements to the Commission, the Addendum to the UCSP EIR was insufficient under CEQA, and records provided after the approval violated CEQA and the Public Records Act's information disclosure requirements and showed additional violations of the UCSP.

The City Council considered the appeal on August 16, 2016, and heard hours of testimony from Jentz and other detractors, as well as supporters of the project. At the end of the hearing, the City Council denied the appeal. Jentz filed a petition for writ of mandate in the Superior Court of San Diego County on September 15, 2016. After



briefing and oral argument, the trial court denied the petition and entered judgment in favor of the City and Niki. Jentz timely appealed.

## DISCUSSION

### I

Code of Civil Procedure section 1094.5 provides for judicial review of administrative orders or decisions. Subdivision (b) of that section states, "The inquiry in such a case shall extend to the questions whether the respondent has proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." This court applies the same standards that the trial court applies in its review of the administrative agency action. (*Desmond v. County of Contra Costa* (1993) 21 Cal.App.4th 330, 334-335 (*Desmond*).)

Under the substantial evidence test, as applied in review of an administrative agency action, "we must examine all relevant evidence in the entire record, considering both the evidence that supports the administrative decision and the evidence against it, in order to determine whether or not the agency decision is supported by 'substantial evidence.' " (*Desmond, supra*, 21 Cal.App.4th at p. 335.) "[T]he petitioner in an administrative mandamus proceeding has the burden of proving that the agency's decision was invalid and should be set aside, because it is presumed that the agency regularly performed its official duty." (*Ibid.*) "Thus, since the same standard of review applies

now on appeal as did in the trial court, the burden is on appellant to show there is no substantial evidence whatsoever to support the findings of the" City. (*Id.* at p. 336; see also *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 514 ["a reviewing court . . . must scrutinize the record and determine whether substantial evidence supports the administrative agency's findings and whether these findings support the agency's decision. In making these determinations, the reviewing court must resolve reasonable doubts in favor of the administrative findings and decision"].)

## II

Jentz first asserts that the City's approval of the Project violated its General Plan. Specifically, Jentz contends the General Plan (1) limits the use of the property on which the Project sits to professional and office uses and (2) required Jentz to prepare a Public Facilities Financing Plan.

## A

The City updated its General Plan in 2005. In 2007, the City adopted the UCSP, which "is the first in a series of significant zoning documents prepared to implement the 2005 General Plan." The UCSP was updated in 2011 and 2015. The UCSP's executive summary states that "[t]he recent update to the City of Chula Vista General Plan focused primarily on revitalization and redevelopment within the older, developed area in the western portion of the City. The Urban Core Specific Plan follows the direction and vision provided in the City's General Plan and establishes a more detailed vision, guidelines, and regulations for future development and beautification in the traditional

downtown area. The Specific Plan area is generally located east of I-5, west of Second Avenue, north of L Street, and south of C Street. While there are approximately 1,700 acres within the Specific Plan boundary, it was determined that changes should be focused on areas more in need of redevelopment. Therefore, the Specific Plan focuses on the redevelopment of approximately 690 gross acres within the larger Specific Plan study area. The Specific Plan creates a framework to attract investment and be a catalyst for revitalization. The overall goal is to create pedestrian-friendly environments, gathering places, and public amenities through community development."

The UCSP contains land use and development regulations for the various subdistricts it covers. For the C-1 Corridor Sub-District, where the Project is located, the UCSP states that the primary land use is "Retail (West of Third Avenue), Office (East of Third Avenue); Residential." The UCSP also categorizes the C-1 Corridor Sub-District as a Neighborhood Transition Combining District (NTCD), and provides that the purpose of the NTCD designation "is to permit special regulation to insure that the character of zones within the Specific Plan area will be compatible with and will complement surrounding residential areas."

The General Plan itself also provides guidelines for the area where the Project is located. The Plan's Land Use and Transportation Element<sup>3</sup> describes the "Mid-Third Avenue District" as "several blocks of Third Avenue frontage that are located between I

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<sup>3</sup> Government Code section 65300 requires cities and counties, like Chula Vista, to adopt long-term general plans for the physical development of the county or city. A general plan must contain the following elements: land use, circulation, housing, conservation, open-space, noise, and safety. (Gov. Code, § 65302.)

and L Streets." The Plan notes that the existing condition of the Mid-Third Avenue District "consists primarily of professional offices north of J Street, and a mix of retail and professional office uses south of J Street." The "Vision for Focus Area" states "[t]he Mid-Third Avenue District remains relatively stable, with primarily office uses, some housing between I and J Streets, and segregated retail and office uses between J and L Streets. Land uses on the west side of Third Avenue, south of J Street, provide local retail services for adjoining residential neighborhoods, while the east side of Third Avenue consists of offices. Building heights for the Mid-Third Avenue District are primarily low-rise."

The General Plan's land use objective for the Mid-Third Avenue District is to "[r]einforce the existing land use pattern of predominantly retail uses on the west side of Third Avenue, and office uses on the east side of Third Avenue between J Street and L Street." Further, the land use policies for the district are to "Establish a professional office district along the east side of Third Avenue, between J and L Streets, consistent with the predominance of existing office uses. Some limited residential uses may be considered within this segment to provide additional vibrancy and pedestrian activity." The "Intensity/Height" policy is to "Establish building heights that are primarily low-rise, although some mid-rise buildings may be allowed, if compatible with the surrounding neighborhood and if their design features benefit the community."

## B

Relying on the UCSP and the General Plan, Jentz asserts the City staff report for the Project inaccurately described the site's General Plan designation as "mixed use."

This is incorrect. Both the UCSP and the General Plan provisions at issue explicitly allow for residential development on the Project site, supporting the City's determination that its zoning regulations allow for the mixed-use primarily residential development at issue. Specifically, the UCSP's "Land Use Matrix," which "specifies permitted uses, conditionally permitted uses, and prohibited uses for each of the [UCSP]'s subdistricts," shows that residential apartments, townhomes, and multiple dwelling uses are permitted, except on the ground floor at street level.

Next, the General Plan's Land Use and Transportation Element for the Mid-Third Avenue District, which Jentz relies on to support his contention that residential use is prohibited and office uses are required, states explicitly in its "Uses" policy that "[s]ome limited residential uses may be considered within this segment to provide additional vibrancy and pedestrian activity." City staff's agenda statement on the Project for the planning commission's June 22, 2016 meeting states that the Project's mixed land use is compliant with both the "vision, objectives and policies" of the General Plan and the UCSP's "regulations, development standards, and design guidelines."

The statement further explained the "Project would redevelop the subject Site, which currently has buildings that were built in the 1950's and are in need of replacement, with a residential and commercial Project. The Project would provide multi-family housing in this area of Chula Vista and would bring families and social and economic activity to the area. Those families would take advantage of and support the commercial base along Third Avenue, which provides a variety of goods and services in close proximity. More residents would contribute to create an active and vibrant

atmosphere along Third Avenue as envisioned by the General Plan and the UCSP. The proposed public plaza at the corner of Third Avenue and K Street with art and furniture will provide an amenity that will activate the street and create opportunities for civic engagement. The wider and furnished sidewalks along Third Avenue and K Street will contribute to activate the street and create a pedestrian-safe and friendly environment."

In addition, the City's statement for the planning commission meeting notes that there are "about five properties in the [C-1 Corridor Sub-District] with residential uses, these properties only represent about 4% of the total [Sub-District] area. [The] General Plan policy calls for some additional residential development . . . to support the existing and future commercial development" and "[i]t has been estimated by staff that the appropriate residential acreage that could potentially be developed within the District based on the General Plan policy is approximately 40% of total area." The statement explained that the "proposed Project FAR of 2.0 (91,345 sq. ft.) represents approximately 9.5% of the total potential residential capacity within the C[-]1 [Sub-] District."

These documents show clearly that the General Plan does not prohibit residential development of the property where the Project is located or limit the property to office

use. The City's decision to approve the mixed-use Project was well within its discretion.<sup>4</sup> (See *Sequoia Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 719 ["It is, emphatically, not the role of the courts to micromanage [city officials'] development decisions. Our function is simply to decide whether the city officials considered the applicable policies and the extent to which the proposed project conforms with those policies, whether the city officials made appropriate findings on this issue, and whether those findings are supported by substantial evidence."].)

## C

Jentz next contends that the City's approval of the Project was improper because Niki failed to prepare a Public Facilities Financing Plan (PFFP), which he asserts was required by the City's General Plan and Chapter 19.09 of the City's Municipal Code.

Chapter 19.09 of the Chula Vista Municipal Code states that its purpose and intent is to: "(1) implement the policy framework established by Chula Vista's General Plan for

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<sup>4</sup> Jentz makes an additional argument that the City's approval of the Project violates the UCSP because it "fails to avoid balconies." As we conclude with respect to Jentz's assertion that the General Plan and UCSP flatly prohibit residential use, we also do not read the UCSP to contain a strict balcony prohibition. Rather, in its requirements for the NTCD where the Project is located, the UCSP states that "[b]uilding design shall be cognizant of adjacent low density uses (i.e. avoid balconies overlooking rear yards.)" The UCSP, however, also explicitly encourages balconies as a design feature in its provisions concerning mixed-use developments like the Project. The City appropriately interpreted the provisions as intending "not to do away with balconies but rather to address their potential effects on privacy." (See *Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, 816 ["Because policies in a general plan reflect a range of competing interests, the governmental agency must be allowed to weigh and balance the plan's policies when applying them, and it has broad discretion to construe its policies in light of the plan's purposes."].) Accordingly, the Project design was ultimately modified to reduce the number of balconies to six, to increase the setbacks where the balconies are located from 10 feet to 74 feet or more, and to add landscaping and opaque glass panels on the Project's terrace to obscure views of nearby yards.

Chula Vista's growth management program; (2) codify threshold standards designed to assure that, as new development occurs, public facilities, infrastructure and services will exist, or concurrently be provided, to meet the demands generated by new development, and service levels to existing residents will not be reduced; and (3) establish administration and compliance mechanisms." Section 19.09.080, which Jentz relies on, provides that "no application for a tentative map, shall be deemed complete or accepted for review, unless: [¶] 1. It is accompanied by a PFFP which has been approved by the City; or [¶] 2. A PFFP, that includes the project, has already been initiated; or [¶] 3. The applicant initiates the preparation of a PFFP. [¶] The PFFP may be waived by the City Council upon a showing that there are no public facilities, infrastructure and service needs warranting the preparation of a PFFP."

One of the two Planning Commission resolutions approving the Project (Planning Resolution No. PCS-15-0006) states that "the requirement for a Public Facilities Financing Plan is hereby waived because the Project is infill development located in a developed portion of the City where adequate public facilities exist or will be provided concurrent with the development of the Project Site." Under the heading "Public Facilities and Services," the resolution explains that the school districts servicing the Project site informed City staff that the districts could "accommodate the additional students generated by the Project, and that the schools [servicing the Project location] would not be adversely impacted by the approval of the Project." Likewise, the resolution provides that "[n]o adverse impacts to the City's sewer system or City's sewer threshold standards will occur as a result of the proposed Project."



Further, the resolution attests that "[t]he City Engineer and Fire Departments have reviewed the proposed subdivision for conformance with City policies and have determined that the proposal meets those standards. The proposed Project would not induce significant population growth, as it is a mixed commercial/residential infill project and would not adversely impact existing or proposed park and recreational facilities. The Project has been conditioned to pay Park Acquisition and Development Fees prior to issuance of Building Permits. Project construction will be required to comply with the 2014 California Green Building Standards, the Cal Green Building Standards and the 2013 California Energy Code. In addition, the Applicant will construct the Project to comply with LEED<sup>5</sup> Gold standards, and therefore energy-efficient multi-family homes will be developed."

Jentz now contends that this finding waiving the requirement is not supported by the record. However, he provides no evidence that calls into question the findings set forth in the approval resolution. Rather, he argues that because the 2016 Annual Report of the City's Growth Management Oversight Committee noted deficiencies in the City's "Threshold Standards" for libraries, police services, traffic and fire and emergency medical services, the waiver is invalid. Although Jentz's assertion is an accurate statement of the findings in the Growth Management Oversight Committee report, this information concerning deficiencies in public services throughout the entire City of

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<sup>5</sup> LEED is an acronym for Leadership in Energy and Environmental Design (2019), <<https://www.usgbc.org/leed>> [as of February 5, 2019], archived at <<https://perma.cc/S3TH-HMLX>>.

Chula Vista generally does not establish insufficient evidence supported the City's waiver of the PFFP for the Project.

The burden is on Jentz to establish the City's determination was not supported by sufficient evidence. (See *Desmond, supra*, 21 Cal.App.4th at p. 336 ["the burden is on appellant to show there is no substantial evidence whatsoever to support the [administrative] findings"].) His general assertion about the City as a whole does not refute other substantial evidence in the record that adequately supports the City's decision to waive the PFFP requirement. That evidence includes the facts stated in the approval resolution that the Project is in a portion of the City where adequate public facilities exist and that, despite the waiver, the City also conditioned the approval of the Project on the requirement that its developers pay all applicable public facilities fees.

## II

Jentz next asserts the addendum to the UCSP adopted by the City for the Project was insufficient under CEQA. He also argues the Project fails to comply with various environmental mitigation measures required by the UCSP and CEQA.

## A

CEQA is designed "to '[e]nsure that the long-term protection of the environment shall be the guiding criterion in public decisions.' " (*Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, 944 (*San Mateo Gardens*).) A basic purpose of CEQA is "to . . . [i]nform governmental decision makers and the public about the potential, significant environmental effects" of proposed

development so communities can make informed decisions about development. (Cal. Code Regs., tit. 14, § 15002, subd. (a)(1).)

"To ensure that governmental agencies and the public are adequately informed about the environmental impact of public decisions, [CEQA] (Pub. Resources Code, § 21000 et seq.) requires a lead agency (*id.*, § 21067) to prepare an [EIR] before approving a new project that 'may have a significant effect on the environment.' (*Id.*, § 21151, subd. (a).) When changes are proposed to a project for which an EIR has already been prepared, the agency must prepare a subsequent or supplemental EIR *only if* the changes are '[s]ubstantial' and require 'major revisions' of the previous EIR. (*Id.*, § 21166.)" (*San Mateo Gardens, supra*, 1 Cal.5th at p. 943 (italics added).) Further, if there are not substantial changes or major revisions, the agency does not prepare a new or supplemental environmental impact report. Instead, the agency prepares an addendum to its prior CEQA analysis. (*Save Our Heritage Organization v. City of San Diego* (2018) 28 Cal.App.5th 656, 666-667; Cal. Code Regs., tit. 14, § 15164.)

"[W]hether an initial environmental document remains relevant despite changed plans or circumstances—like the question whether an initial environmental document requires major revisions due to changed plans or circumstances—is a predominantly factual question. It is thus a question for the agency to answer in the first instance, drawing on its particular expertise. [Citation.] A court's task on review is then to decide whether the agency's determination is supported by substantial evidence; the court's job ' " 'is not to weigh conflicting evidence and determine who has the better argument.' " ' " (*San Mateo Gardens, supra*, 1 Cal.5th at pp. 952-953.) This review standard gives

deference to a public agency's determination whether further CEQA review is required and " 'resolve[s] reasonable doubts in favor of the administrative decision' " (*Moss v. County of Humboldt* (2008) 162 Cal.App.4th 1041, 1058.)

## B

We agree with the City that its determination to rely on an addendum for the Project, rather than to revise the UCSP EIR, is supported by the evidence. The Addendum shows the Project is within the area covered by the UCSP and that it does not create any new significant impacts beyond those identified in the UCSP. Specifically, the Addendum makes clear (1) that the UCSP allows 7,100 new residential units, over the 3,700 existing at the time of its implementation, by 2030; (2) that eight technical studies prepared for the Project show it would not result in any additional significant impacts or increased severity of impacts previously identified in the UCSP EIR; (3) that no relevant new information became available after the UCSP EIR was prepared; and (4) that the mitigation measures identified in the UCSP EIR govern the Project.

The Addendum and the supporting technical studies prepared for the Project are sufficient evidence to support the City's decision that section 21166 did not require a supplemental or subsequent EIR for the Project. Critically, Jentz does not identify any evidence of impacts that are not addressed in the EIR or the Project Addendum. (See *Committee for Re-Evaluation of T-Line Loop v. San Francisco Municipal Transportation Agency* (2016) 6 Cal.App.5th 1237, 1247 ["party challenging an agency's decision under section 21166 has the burden to demonstrate that the agency's decision is not supported by substantial evidence and is therefore improper"].)

## C

Jentz also contends that in approving the Project, the City failed to comply with certain mitigation measures it adopted when it certified the UCSP EIR. He challenges the Project's compliance with the EIR's mitigation measures for: (1) air quality; (2) transportation; (3) soils, seismic and geological hazards; and (4) for the noise, light and visual character of the Project. We reject Jentz's assertions with respect to each of these areas of mitigation and hold that substantial evidence supported the City's determination with respect to each applicable mitigation measure.

"The standard of review applicable to an agency's decision under CEQA depends on the nature of the action being reviewed and when in the multitiered process it occurred." (*Sierra Club v. County of Sonoma* (2017) 11 Cal.App.5th 11, 23.) In general terms, we review an agency's compliance with CEQA for "prejudicial abuse of discretion," which exists if "the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence." (Pub. Resources Code, § 21168.5.) "Judicial review of these two types of error differs significantly: While we determine de novo whether the agency has employed the correct procedures, 'scrupulously enforc[ing] all legislatively mandated CEQA requirements' [citation], we accord greater deference to the agency's substantive factual conclusions. In reviewing for substantial evidence, the reviewing court 'may not set aside an agency's approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable,' for, on factual questions, our task 'is not to weigh conflicting evidence and determine who has the better argument.' " (*Vineyard Area Citizens for Responsible*

*Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.) " 'The substantial evidence standard is applied to conclusions, findings and determinations.' " (*Placerville Historic Preservation League v. Judicial Council of California* (2017) 16 Cal.App.5th 187, 196 (*Placerville*).)

In accordance with its obligations under CEQA, the City adopted the Final EIR for the UCSP by its Resolution No. 2007-097. It is undisputed that various mitigation measures contained in the EIR apply to the Project. Whether the Project is compliant with these measures is a factual determination that both the trial court and this court review for sufficient evidence. (*Placerville, supra*, 16 Cal.App.5th at pp. 196-197.) As we discuss, Jentz has not shown a basis to reverse the City's decisions.

Jentz first points to the Project's air quality impacts and argues that the Project does not satisfy UCSP Mitigation Measure 5.10.5-3. This mitigation measure states that "Prior to issuance of an Urban Core Development Permit or other discretionary permit, all subsequent individual development projects shall demonstrate compliance with relevant land use and development regulations contained in the UCSP to minimize air pollutant emissions. These include, but are not limited to: measures aimed at promoting pedestrian activity (Chapter V, pp. V-2- V-5); bicycle activity (Chapter V, pp. V-5 - V-7, V-9- V-10); public transit facilities (Chapter V, pp. V8- V-9), including the West Side Shuttle (Chapter V, pp. V -11 - V -12); and reintroduction of the traditional street grid (Chapter V, pp. V-16- V-19)."

In his briefs, Jentz identifies various specific recommendations contained in the UCSP to address air quality issues, including the creation of bicycle facility

improvements along Third Avenue, additional bus services, and modification of travel lanes and road design. It goes without saying that the UCSP does not require every Project the City approves within the UCSP area to address every single point and mitigation technique set forth in the Specific Plan. Rather, Mitigation Measure 5.10.5-3 "requires subsequent projects to comply with Specific Plan measures to minimize air pollutant emissions, such as measures that promote pedestrian activity, bicycling, public transit facilities, and reintroduce the traditional street grid." Indeed, Jentz, concedes the measure "does not mean each subsequent project in the UCSP area has to build several facilities and fund bus routes."

The record establishes that the Project includes elements that minimize air pollutant emissions, such as a LEED Gold-compliant building design and street improvements that facilitate pedestrian activity, including a widened sidewalk along Third Avenue and K Street, new paving, street trees in grates, benches and planters. In addition, residents of the Project have access to Bus Route 929 on Third Avenue, connecting them to other bus routes and trolley stations. This evidence amply supports the City's determination that the Project complies with Mitigation Measure 5.10.5-3.

Jentz next contends that the Project failed to comply with UCSP Mitigation Measure 5.8.5-4. This measure states that "Prior to issuance of an Urban Core Development Permit for subsequent development projects, the traffic assessment prepared to quantify the projects' potential traffic impacts will also identify how alternative modes of transportation will be accommodated" and that mitigation for traffic impacts "may be in the form of: 1) Compliance with the development regulations and

design guidelines of the UCSP to accommodate pedestrians, bicyclists and public transit; and 2) Where applicable, construction of improvements within the project boundaries; and/or 3) Early advancement of improvements beyond the project boundaries, subject to a reimbursement agreement."

The record sufficiently supports the City's determination that the Project complied with this measure. Even though it was not required, a traffic assessment was completed that showed the Project would not result in any significant traffic impacts. Further, the Project identified alternative modes of transportation and included design features to encourage pedestrian activity.

Jentz challenges the Project's compliance with UCSP Mitigation Measure 5.4.5-1, which requires a soil and geologic evaluation of the project. The record, however, establishes that the developer complied with this requirement by its submission of a preliminary soils and geotechnical report with the Project plans that was reviewed by City staff and that showed no signs of liquefiable, compressive, or expansive soils. The City also notes that an updated report will be submitted at the building permit phase as a condition of the Project when the technical drawings are submitted for approval.

Jentz also challenges the Project's compliance with the UCSP EIR's noise, light and visual character mitigation measures. As with the other measures, the record before this court shows that sufficient evidence of compliance supported the City's determination. The noise mitigation measure states commercial uses that produce noise must comply with the City's noise ordinance. The Project also must comply with the mixed-use provisions of the UCSP that include minimizing the effect of exterior noise.



The Project's developer submitted two noise reports during the City's review process, both of which were reviewed by a second acoustical consultant, and modifications were made to the project to address noise impacts before approval.

The Addendum itself also addressed the Project's noise impacts and its mitigation efforts. Further, the Resolution approving the Project requires the applicant to implement, to the City's satisfaction, the mitigation measures identified in the UCSP EIR. Sufficient evidence supported the City's conclusion that the Project complied with UCSP EIR's noise mitigation measure.

Jentz's assertion that insufficient evidence supported the City's finding that the UCSP EIR's mitigation requirements for light and glare were satisfied is also not well taken. This mitigation measure, 5.2.5-2, requires projects to comply with UCSP development regulations to reduce or avoid adverse impacts to light and glare. The Project's EIR Addendum addresses the issues and the building permit issuance is conditioned on the Project satisfying the UCSP's relevant regulations. Further, Jentz points to no evidence in the record that shows the Project will produce excessive light or glare.

Likewise, the record contains sufficient evidence that the Project is compliant with the UCSP EIR's mitigation measures for visual quality. UCSP Mitigation Measure 5.2.5-1 requires projects to comply with UCSP development regulations and design guidelines to reduce or avoid impacts to landform alteration and visual quality. Mixed-use projects must minimize "the effects of any exterior noise, . . . glare, . . . and other potentially significant impacts." The record shows the Project is consistent with specified

development regulations for mixed-use projects in the UCSP. Additionally, the EIR Addendum addresses such impacts and the Project's required mitigation. Jentz mentions "shading" impacts, but that topic was evaluated in a study that showed the Project created minimal shade and that shading was not a significant impact. Similarly, visual light and glare impacts were addressed by conditions of the City's approval and no additional impacts were anticipated.

Jentz's argument can be summarized as a request for this court to replace the City's factual findings with our own. That is not our role. The administrative record contains sufficient evidence to support the City's determination that the Project complied with each of the UCSP EIR's mitigation measures raised by Jentz.<sup>6</sup>

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<sup>6</sup> Jentz also argues that because the project failed to adequately mitigate its environmental impacts, the City could not approve an increase in the allowable FAR. He notes that in order for the City to approve a development exception for the Project's FAR, which exceeds the maximum of 1.0 set forth in the UCSP, the Project was required to show that it "will comply with all other regulations of the Specific Plan," including its mitigation requirements. Because we reject Jentz claim that the City's findings concerning the mitigation requirements were not supported by sufficient evidence, we also reject his derivative assertion that a development exception for an increase in FAR was barred on this ground. We also reject Jentz's bald assertion that the increase in FAR was not allowable because the Project will " 'adversely affect the goals and objectives of the Specific Plan and the General Plan.' " Jentz provides no support for this assertion and our review of the record makes clear the City considered the goals and objectives of the General Plan and UCSP in its approval of the Project. (See *State Farm Fire & Casualty Co. v. Pietak* (2001) 90 Cal.App.4th 600, 610 [" 'The burden of affirmatively demonstrating error is on the appellant.' "].)

DISPOSITION

The judgment is affirmed.

O'ROURKE, Acting P. J.

WE CONCUR:

DATO, J.

GUERRERO, J.